



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Twenty-sixth session**

Summary record (partial)* of the 346th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 5 April 2017, at 10 a.m.

Chair: Mr. Brillantes

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The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (continued)

Examination of the implementation of the Convention by Jamaica in the absence of a report (continued) (CMW/C/JAM/QPR/1)

1. *At the invitation of the Chair, the delegation of Jamaica took places at the Committee table.*

2. **Ms. Gordon** (Jamaica) said that in keeping with its efforts to bring domestic laws into line with the Convention, her Government would undertake a review of legislation in the light of the International Labour Organization's recommendations regarding compliance with the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and it would discuss proposed amendments with social partners in accordance with the usual practice. However, the Government maintained its stance that Jamaica was not in a position to make a declaration under article 76 of the Convention.

3. The Government was not aware of any negative impacts on Jamaica caused by the recent policies adopted by the United States of America in relation to immigration and migrant workers. Having already provided a comprehensive outline of the services available to migrant workers for the lodging of complaints, the delegation wished to add that the Liaison Service, which was managed jointly by the Ministry of Labour and Social Security and the Ministry of Foreign Affairs and Foreign Trade, had deployed officers in Canada and the United States who could respond to workers' needs on a 24-hour basis. Reported disputes and cases of abuse were investigated and employers were contacted so that any detected infringements or other issues could be discussed and addressed.

4. The Child Care and Protection Act made it an offence for any person under the age of 18 years not to attend school. Any non-attendance by children, including the children of migrant workers, was thus usually considered an offence.

5. The Government had no policy of withholding or deducting any part of the remittances sent by migrant workers to their families. In the past, workers taking part in the Overseas Employment Programme in Canada and the United States had directly remitted funds to their accounts through a Government-operated mechanism that ensured that families received the funds in a timely and consistent manner. However, new regulations introduced by the United States and Canada, in 2010 and 2016 respectively, prohibited the sending of remittances via that mechanism. The delegation did not have any information about the costs incurred by migrant workers in sending their remittances home: it was thought that they now used regular banking channels and money transfer services, which were paid for at the market rate.

6. The delegation wished to provide further information in relation to the management and organization of recruitment agencies. The Employment Agencies Regulation Act and its supporting regulations stipulated that employment agencies should charge no more than 45,000 Jamaican dollars for placing a person in employment overseas and no more than 2,500 Jamaican dollars for registration. Agencies charging fees in excess of such amounts were liable for prosecution. They were also prohibited from charging fees for the placement of any person requiring an H-2B visa to carry out non-agricultural work in the United States. The Ministry of Labour and Social Security held meetings with employment agency operators at least once a year with a view to strengthening migration regulations and control mechanisms, discussing new developments and policies — including strategies for the protection of migrant workers — and reminding operators of their legal obligations and the consequences of non-compliance.

7. The National Plan of Action for Combating Trafficking in Persons in Jamaica, adopted in 2012, had been updated for the period 2015-2018 with strategic imperatives and outputs and an emphasis on prevention, protection and prosecution. Key activities carried out under the Plan had included the opening of a shelter for victims of trafficking in 2013; amendment of the Trafficking in Persons (Prevention, Suppression and Punishment) Act of 2007; the appointment of a national rapporteur; the development of standard operating

procedures, a law enforcement and immigration regime and victim services; and a sustained public education campaign, including the running of public service announcements, presentations in various forums, the strategic placement of billboards and mass distribution of literature on human trafficking, and the inclusion of the topic in the secondary school curriculum. During 2015 and 2016, the National Task Force against Trafficking in Persons had partnered with the United Nations Development Programme (UNDP) to develop effective anti-trafficking strategies, including the creation of a database and the funding of a study and a project to combat trafficking in persons. Ongoing collaboration with UNDP was aimed at developing a national policy on trafficking in persons in order to strengthen the framework in which anti-trafficking interventions were designed and implemented; defining institutional arrangements of the National Task Force; and establishing strategic goals and a monitoring and evaluation framework. The National Task Force was working in parallel with the International Organization for Migration (IOM) to develop and implement strategies to effectively combat trafficking in persons. Under that approach, training and technical assistance had been provided for members of the judiciary and government officials involved in efforts to counter human trafficking. The Bureau of Women's Affairs, attached to the Office of the Prime Minister, was engaged in awareness-raising efforts and over the previous two years had sought to ensure that the topic was included in discussions on gender-based violence. Further information related to trafficking, including details on cases and prosecutions prior to 2016, would be submitted in writing to the Committee.

8. The Government was not contemplating any measures to amend the Deportation (Commonwealth Citizens) Act, the Aliens Act or the Immigration Restriction (Commonwealth Citizens) Act, which criminalized irregular migration. However, the National Policy and Plan of Action on International Migration and Development addressed the protection of migrants in three areas: family, migration and development; labour mobility and development; and human rights and social protection.

9. Civil society organizations had been included in various coordination activities and were consulted by the National Task Force against Trafficking in Persons on a quarterly basis. Such coordination was not ad hoc but was based on an established schedule of periodic meetings. Civil society organizations had not been involved in drafting the statement presented to the Committee and had no ongoing involvement in matters related to work permits or the free movement of persons; however, they had been consulted on policies formulated in respect of certain issues, including the National Policy and Plan of Action on International Migration and Development. Moreover, the Government was required to follow the Consultation Code of Practice for the Public Sector in its consultations with civil society. Non-governmental organizations (NGOs) in Jamaica had limited involvement in migration and potentially sensitive border security issues; individuals and organizations working in that area tended to be engaged in providing shelter, often on an emergency basis. To address the paucity of technical data, the Statistical Institute of Jamaica had begun a joint initiative with IOM to establish a central migration database that would compile all migration-related data existing in various government ministries, agencies and departments.

10. The Government did not specifically cite the name of the Convention when advising citizens about their rights, since its provisions had been incorporated into Jamaican law. However, the Ministry of Labour and Social Security did advise Jamaican migrant workers of their rights in pre-departure training sessions, and workshops were held with the families of departing migrant workers to give them information about the programmes coordinated by the Government. A further skills training project would be undertaken with IOM to enhance and strengthen the labour recruitment process for overseas work programmes. The Office of the United Nations High Commissioner for Human Rights had conducted general training for judges on all the conventions to which Jamaica was a party. The Passport, Immigration and Citizenship Agency provided information to migrant workers entering the country and further information was published on the website of the Ministry of Labour and Social Security.

11. As the Committee's question about discriminatory legislative provisions was taken to refer to section 4 of the Immigration Restriction (Commonwealth Citizens) Act and section 6 of the Aliens Act, the delegation replied that those provisions did not deliberately

target persons with disabilities but rather responded to the need to regulate the entry of people who could pose a risk to public safety and security or who might become a burden on public resources. The provisions applied as well to non-disabled persons. In practice, many provisions that were perceived as discriminatory were not applied at ports of entry, since government agencies took administrative measures and made collective decisions that sought to avoid any breaches of human rights law. Both Acts were being amended to remove offensive appellations ascribed to persons with mental or other disabilities.

12. In response to the question about sexual exploitation, the delegation wished to stress that the Trafficking in Persons (Prevention, Suppression and Punishment) Act criminalized forced labour, child trafficking, sexual exploitation, exploitation of prostitution and domestic servitude. The concept of "sex tourism" was not recognized in Jamaican law.

13. The delegation did not have full information at its disposal regarding the matter of irregular migrants, but it wished to underscore that the Government acted in accordance with Jamaican and international law and took account of extenuating circumstances. For example, in 2007 a group of 90 Honduran nationals had been caught engaging in illegal fishing activity in Jamaican waters. The Anti-Trafficking in Persons Unit of the Jamaica Constabulary Force, acting in conjunction with other government agencies, had determined that a number of minors working on the vessel were victims of trafficking. After being taken to safe housing provided by the authorities, they had been later returned to their homeland for processing and for the cases of human trafficking to be prosecuted. In view of the continued prevalence of unlawful activities in Jamaican waters, such as drug-smuggling, people-smuggling and poaching, any illegal immigrant apprehended in the country's maritime jurisdiction was charged and taken before a judge.

14. The Government was not contemplating any changes to section 9 of the Aliens Act, since it believed that security considerations warranted the retention of the provision permitting the detention of irregular migrants. Subject to ministerial discretion, low-risk migrants might be accommodated in other facilities, such as hotels, or be allowed to live with family members, whereas persons posing a serious security risk could be held in correctional facilities. Foreign nationals awaiting deportation were held in an area separate from convicted prisoners and were not harmed while in custody. Migrant workers had the right to appeal to the authorities if they were not granted work permits.

15. With an eye to improving the working conditions of migrant workers and protecting them from abuse, the Government continued to raise public awareness through ongoing campaigns about the dangers presented by some private recruiting agencies. Regarding the question of remuneration, the Government planned to amend the Employment (Equal Pay for Men and Women) Act so as to render it more effective.

16. As part of the Government's arrangements for accommodating returning citizens, including participants in overseas employment programmes, a general regime was in place that afforded special customs allowances for residents who were returning voluntarily and met certain eligibility criteria. The Ministry of National Security had an arrangement in place for reviewing the cases of persons scheduled for deportation prior to their return to Jamaica; it could thus ascertain whether such individuals had any appeals pending and whether all legal remedies had been exhausted in the deporting country.

17. Concerning the protection of Jamaican nationals overseas, the memorandum of understanding that governed the Canadian Seasonal Agricultural Workers Programme contained four main principles: that the programme would be administered according to guidelines subject to annual review by both countries; that workers would be employed at a premium cost to the employers and would receive accommodation and fair and equitable treatment while in Canada; that workers would be employed in the Canadian agricultural sector only during set periods when workers resident in Canada were not available; and that each worker and employer would sign an employment agreement, subject to annual review by both parties. In Jamaica, the programme was administered by a management committee formed of representatives of the Ministry of Labour and Social Security, the Ministry of Finance and the Public Service, the Solicitor General and the major trade unions, which also represented civil society. In addition, the memorandum of understanding permitted the deployment of Jamaican officials to Canada to protect workers' welfare and to ensure the

smooth operation of the programme for the mutual benefit of both countries. The United States seasonal labour programme operated within legal and policy frameworks administered by the Jamaican and United States authorities, with protection services for workers provided by the Liaison Service and the Department of Labor, respectively.

18. The delegation wished to add that Jamaica was a signatory to other relevant multilateral agreements, including the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, and a 1996 agreement of the Caribbean Community (CARICOM) that aimed to harmonize the social security legislation of member States such that workers and their dependants could draw social security benefits in the countries where they had contributed.

19. **Mr. Ceriani Cernadas**, noting that CARICOM had an existing framework for the free movement of skilled labour, said that he was interested to know whether any initiatives had been undertaken by the State party or coordinated with other Caribbean countries with a view to reaching a comprehensive agreement on other types of migration, such as migration from Haiti, migration of unskilled labour or forced migration owing to natural disasters, political conflict, poverty, exclusion or discrimination.

20. The Committee welcomed the clarification that the discriminatory clauses prohibiting persons with disabilities from entering Jamaican territory were not applied. However, it would be grateful for updated information on any steps taken to amend domestic laws and bring them into line with the State party's obligations under the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

21. Referring to the delegation's statement that irregular migrants were either detained in penitentiary institutions or sent to other locations depending on the security risk that they presented, he wished to learn whether alternatives to incarceration were available so that individuals could remain at liberty, for example during deportation proceedings. What category of persons might be able to benefit from such alternative measures? The delegation should indicate which entities or individuals, such as ministers or courts, were responsible for deciding how migrants were treated, and it should also state whether migrant children under the age of 18 years were held in correctional facilities or at other centres. The Committee was interested to know how the State party applied the provisions of section 4 of the Immigration Restriction (Commonwealth Citizens) Act in respect of unaccompanied migrant children who, if not the victims of trafficking, were unable to communicate effectively due to illiteracy or other reasons and were therefore in a situation of vulnerability. How did the authorities respond when such children arrived at a port of entry?

22. Lastly, recalling his earlier question concerning sexual orientation, which had not been intended to ascertain whether migrant workers faced discrimination on such grounds, he wished to know the delegation's response to reports that many Jamaican nationals of a certain sexual orientation were forced to migrate or were thinking about migrating as a consequence of discrimination, ill-treatment, abuse or violence. He wondered what measures the State party had taken to prevent such situations.

23. **Ms. Landázuri de Mora** said that although Jamaica was a comparatively young country, it was to be commended on the scope of its efforts to protect its citizens abroad. That said, she would appreciate more in-depth information about the wages and rights of its migrant workers, including whether they received the same wages as those paid to nationals of the host country and were thus protected against wage discrimination.

24. The Committee was grateful for the details provided on the employment programmes in Canada and United States but would welcome more information on work schemes, if any, that had been implemented in the United Kingdom of Great Britain and Northern Ireland. Lastly, she asked what actions the Government had taken for the social welfare of Jamaican children whose parents or family members had migrated and whether any mechanisms had been put in place for their protection.

25. **Mr. Tall** said that the Committee had received reports of deplorable conditions in prisons and detention facilities in the State party, including overcrowding, lack of medical care, poor sanitary conditions, failure to separate persons held on remand from convicted prisoners and the lack of a legal framework applicable to pretrial detention. Pursuant to article 17 of the Convention, States parties were required to hold migrant workers separate from convicted prisoners and juveniles separate from adults. He therefore wished to know what action had been taken by the State party to guarantee the rights of migrant workers who had been deprived of their liberty on the grounds of their migration status.

26. There had been allegations of torture, ill-treatment and the use of excessive force by law enforcement officers during arrest and interrogation in police stations and other detention facilities. He asked whether any migrants had been subjected to such treatment and, if so, whether the perpetrators had been prosecuted and the victims had been compensated. He also enquired about the procedures for lodging complaints in such circumstances.

27. **The Chair**, speaking in his capacity as a Committee member, said he was concerned that NGOs had not been consulted with regard to possible involvement in the preparation of a report. He asked whether they had requested to participate. He also enquired about the State party's view that civil society was represented by trade unions.

28. **Ms. Ladjel**, in requesting clarification of the concept of circular migration, said that it was reportedly a palliative measure that enabled families to earn an income without obtaining permanent employment. She asked how the State party proposed to convert that practice into a longer-term solution for Jamaicans in search of employment.

29. **Mr. Kariyawasam** said he noted that some migrant workers in the State party were employed as professionals, for instance as physicians and accountants. He asked whether migrant workers who married a Jamaican national automatically acquired citizenship or were merely issued with a residence permit.

The meeting was suspended at 11.15 a.m. and resumed at 12.05 p.m.

30. **Ms. Gordon** (Jamaica) said that detailed information concerning CARICOM regional initiatives regarding migration issues would be provided in due course. A regional mechanism had been established to handle mass movements of persons in emergency situations, such as natural disasters. Jamaica respected the distinction between migrant workers, refugees and internally displaced persons and had developed separate procedures for each category. Inasmuch as the territories of CARICOM member States were not all contiguous, since some were islands and others were on the coast of the continental mainland, the approaches adopted to migration were not necessarily the same for each State.

31. A comprehensive response to the question on legislation concerning persons with disabilities would be provided in due course.

32. With regard to irregular migrants, she requested information from the Committee regarding reports of specific cases in which they had been detained and subjected to human rights violations.

33. No employment programmes with the United Kingdom were administered by the Jamaican Government; the Overseas Employment Programme focused on the United States and Canada. Reciprocal social security agreements had been signed with the United Kingdom in 1972, with Canada in 1983, with Quebec in 1988 and with 12 CARICOM countries in 1996. Migrants could work in those countries without losing their social security benefits. The reciprocal agreements were also applicable to refugees and their families residing in the territory of another party.

34. Incidents involving vulnerable migrant children were very rare. When they occurred, they were handled on a case-by-case basis in a humanitarian manner and in accordance with the law. As Jamaica was an island, unaccompanied children rarely arrived by sea or air.

35. The Family Services Unit of the Ministry of Labour and Social Security provided welfare and support services for overseas workers and their families. Social workers paid routine visits to families to assess their situation and to submit recommendations for assistance to relevant agencies. Other interventions included: guidance for improving

families' living standards; assistance in securing financial and other support for income-generating projects; ensuring that families were being supported by overseas workers and that workers were communicating with their families; and provision of counselling services for sick or injured workers at home or in hospital. In cases where children were left at home, the Ministry assessed their living conditions and, where the conditions were deemed to be inadequate, recommended assistance under relevant social programmes. The Ministry also ensured that they received medical assistance and that they were enrolled in and attended school. It supported the registration of children in social programmes and referred children with disabilities to relevant agencies, including the Jamaica Council for Persons with Disabilities and the Early Stimulation Programme.

36. With regard to allegations of torture and excessive use of force by the police, she referred the Committee to the interactive dialogue conducted with the Universal Periodic Review Working Group in 2015 and the Human Rights Committee in 2016 and the data and reports submitted on those occasions. In addition, she requested information regarding specific allegations of ill-treatment, torture or excessive use of force against migrant workers by State agents. She stressed that irregular migrant workers were held separately from convicted prisoners in detention facilities.

37. The Government had never pursued a policy of restricting the free movement of Jamaican nationals overseas. Numerous studies had been conducted, including by the University of the West Indies, on people's motives for migration. There was in fact strong evidence that many Jamaicans were predisposed to migrate.

38. The delegation wished to know which NGOs or civil society organizations had hoped to be involved in preparing the initial report to the Committee, since only a few had demonstrated an interest in the topic. Trade unions were deemed to represent civil society. They were highly active and usually took a strong interest in migrants, especially those employed overseas.

39. A more holistic picture of circular migration and its positive impact on people's lives would be provided in due course. Workers under seasonal programmes had improved their standard of living in Jamaica and had educated their children up to the tertiary level. Many seasonal workers also had regular income-generating activities in Jamaica. Both overseas and locally based workers engaged in sophisticated planning and budgeting, focusing on education and housing.

40. Migrants who married Jamaican nationals were presumably in possession of a work permit. They could then apply for a permanent residence permit.

41. **Mr. Tall** said that the Human Rights Committee had expressed concern in its concluding observations (CCPR/C/JAM/CO/4) regarding reports of torture, ill-treatment and excessive use of force by the police or security forces during arrests, in police stations, during interrogation and in detention facilities. If Jamaican nationals were subjected to such treatment, it was more than likely that detained migrants were at even greater risk of ill-treatment. He enquired about the measures taken to prevent such violence and to ensure that irregular migrants were not subjected to ill-treatment during the time they were detained. He also enquired about measures taken to prosecute the perpetrators when the authorities were informed of cases of ill-treatment and those taken to compensate the victims.

42. **Ms. Gordon** (Jamaica) said that in the absence of confirmation by the Committee that it had received reports of specific cases in which migrant workers had been subjected to ill-treatment while in detention, she would seek to ascertain whether there were any such cases and would inform the Committee thereof in due course.

43. **Mr. Ceriani Cernadas** said that the failure of the State party to submit an initial report and to reply to the list of issues forwarded in October 2015 had rendered the Committee's task quite onerous. It had been unable to raise specific questions owing to the lack of statistics and qualitative data concerning the implementation of relevant legal provisions. However, the Committee welcomed the information provided during the interactive dialogue and looked forward to receiving additional information as soon as possible so that it could be reflected in the conclusions and recommendations.

44. It was also regrettable that there was no forum for dialogue with civil society on issues pertaining to migrant workers and that no information or shadow report had been submitted by civil society organizations.

45. His question regarding discrimination on grounds of sexual orientation had not implied that the persons concerned encountered impediments to emigration. He wished to know whether they were subjected to discrimination, leading in some cases to violence and persecution, and decided on that ground to emigrate.

46. **Ms. Castellanos Delgado**, while welcoming the fruitful dialogue with the State party, said that she was curious to know why it had submitted reports to other treaty bodies but not to the Committee. The dialogue was not intended to place States parties in the dock but rather as a means to exchange information and opinions with a view to supporting the rights and improving the conditions of migrant workers and their families.

47. **Ms. Gordon** (Jamaica) said that the delegation had found the dialogue highly constructive. Supplementary information would be provided as soon as possible and the Jamaican authorities would carefully consider the concluding observations.

The discussion covered in the summary record ended at 12.45 p.m.